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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN C. HARVEY
and JAMES W. CUDDIHY

Appeal 2007-001837
Application 08/470,571
Technology Center 2600

Decided:¹ June 24, 2009

Before LEE E. BARRETT, JAMESON LEE, and MARK NAGUMO,
Administrative Patent Judges.

BARRETT, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of our decision entered March 20, 2009. In particular, Appellants argue that we erred in interpreting the term "coordinated display" in the limitation "a coordinated display using said generated image and said video image" in claims 93 and 187.

The request for rehearing is granted.

¹ The two month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

DISCUSSION

Our original decision affirmed the rejection of claims 56, 57, 58, 60-63, 65, 66, 73, 89, 90, 93, 100, 102, 107, 108, 187, 191, 192, 195, and 196 under § 103(a) over Hedger and Sedman and either one of Yoshino or Bart. Appellants argue that we erred in interpreting "a coordinated display using said generated image and said video image" in claims 93 and 187.

We stated in our decision, that the sole issue as to claim 93 is: "Does the combination of references teach or suggest 'outputting said video presentation . . . comprising . . . *a coordinated display using said generated image and said video image*'?" (Decision 83). We noted that "[t]he Examiner interprets a 'coordinated display using' to only require that the generated image (stock performance in Hedger) and the television video image are in a certain relationship, such as generated image being superimposed on the video image in a certain place, for which the rejection relies on the teachings of Yoshino or Bart" (Decision 83-84). We agreed with the Examiner and interpreted that "Claim 93 does not define the 'coordinated display' as requiring more than 'using' the two images, i.e., it is the display that is coordinated, not the display of the generated image with the display of the video image" (Decision 84). Accordingly, we affirmed the rejection of claim 93 and claim 187 which contains identical language.

Appellants argue that we erred in our interpretation by failing to give the words "coordinated" and "using" different meanings (Req. Reh'g 4). It is argued:

In accordance with a fair reading of the claim language, the recited display uses the two images together to advance the required coordination—it is the relationship between the combined presentation of the two images that provides the meaning to the viewer. Accordingly, the display using the generated image and the video image *is coordinated* on the basis of the information used to generate those images.

Req. Reh'g 5. It is argued that "[t]he 'coordinated display' limitation does require the information upon which the generated image and the video image are based be used to create the required coordination of the 'coordinated display'" (Req. Reh'g 6). It is argued: "The information of the generated image need not be coordinated with the video image. On the contrary, the generated image itself must be 'coordinated' with the video image."

Req. Reh'g 7. Appellants explain how Figure 1C in the "Wall Street Week" example shows a "coordinated display" (Req. Reh'g 8-11). "Appellants submit that the term, 'coordinated display,' is properly interpreted to mean a display where the images used in the display are displayed dependent on a defined relationship between the content of the images." Req. Reh'g 12.

We are persuaded by Appellants' arguments. We adopt Appellants' definition of a "coordinated display" as "a display where the images used in the display are displayed dependent on a defined relationship between the content of the images" (Req. Reh'g 12). Therefore, we agree that merely superimposing a "generated image," such as the stock performance in

Hedger (p. 564), at a certain location on the display of the television program, where the generated image has no defined relationship to the content of the television program, is not "a coordinated display using said generated image and said video image." Critical to our decision is the fact that the "generated image" in Hedger has no defined relationship to the content of the television program—the stock portfolio values are calculated and displayed independent of the television program and, indeed, the rejection relied on Yoshino and Bart to show that computer generated data can be superimposed on television video.

While it appears that the display of closed captions for a television program would have a defined relationship to the television program image so as to constitute a "coordinated display," this does not satisfy the other limitations of claims 93 and 187. In particular, claims 93 and 187 require generating an image by processing a user specific subscriber datum which is stored at the receiver station prior to organizing a signal that causes generating the image (claim 93) or outputting the video presentation (claim 187), which limitations are not met by closed captioning. Hedger operates on stored data, but as we have noted, it does not teach a "coordinated display" as we now define it.

CONCLUSION

The request for rehearing is granted. Accordingly, our original decision is modified to the extent that the rejection of claims 93, 100, 102, 107, 108, 187, 191, 192, 195, and 196 under § 103(a) over Hedger and Sedman and either one of Yoshino or Bart is reversed.

Appeal 2007-001837
Application 08/470,571

Requests for extensions of time are governed by 37 C.F.R. § 1.136(b).
See 37 C.F.R. § 41.52(b).

GRANTED

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